IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 638 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYBHAI MOHANDAS NARANG - Applicant(s)
Versus
JANAKI VIJAYBHAI NARANG & 1 - Respondent(s)

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Appearance :
MR DN PANDYA for Applicant(s) : 1,
None for Respondent(s) : 1,
MR.A.J. DESAI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 09/10/2006

ORAL JUDGMENT

A senior advocate Mr.Pandya for the applicant has come up with such a frivolous petition and is making all frivolous arguments. This is not expected from a senior

advocate. Mr.Pandya deliberately wasted the time of the Court.

Initially, he read the 'entire order' impugned. Thereafter, he cited number of authorities, list of which he did not furnish to the Sheristadar. That resulted in the wasting of Court time.

2. The learned advocate was allowed to argue to his heart's content. Having found that the court is not convinced of any of his submissions, he started reading the memo of petition. The Court had no other option but to refrain him from doing so. It is not expected from an advocate much less a senior advocate, 'to read memo of petition'. An advocate is expected to formulate and advance a point and take the verdict of the Court. To read a memo of petition is nothing but a deliberate attempt on the part of the senior advocate who is practising in this Court for last so many years to see that the Court is tired out by wasting its time.

3. Coming to the merits of the case the petitioner husband is before this Court challenging the order passed by the Family Court No.2, Ahmedabad on 10.07.2006 in Criminal Misc. Application No.389 of 2003.

The Court had earlier passed an order granting interim maintenance on 09.09.2004 and awarded Rs.750/- is awarded to the applicant-wife and Rs.500/- to the minor child as interim maintenance. After hearing the matter finally, the Court found that the wife is not entitled to get any maintenance. Hence rejected the application qua 'wife', whereas granted maintenance for minor child.

4. The submission of Mr.Pandya is that, 'the Court ought to have passed an order directing the wife to refund the husband the total amount which he had paid to the wife under interim order'. In support of this proposition, Mr.Pandya cited various decisions of which not one is applicable to the facts of the case.

5. Mr.Pandya firstly relied upon a decision of this Court in the matter of Karsanji Chatraji Hadiyol Vs. Jasuben Ramsingji Parmer & others, reported in 1998 (1) G.L.R. 231. He relied upon Head Note 'B' of the decision which reads as under:

> "Criminal Procedure Code, 1973 (II of 1974) – Sec.125(2) – **Interim order for maintenance is subject to final order** – Contention that

> Magistrate having once made an order of interim maintenance cannot direct that maintenance ordered in final order will be payable from date of Application - contention rejected.”

This decision nowhere says that in a case where the Court has passed an order granting maintenance by way of interim order and in final verdict, if it is held that wife is not entitled to any maintenance amount, then the amount paid is to be refunded to the wife.

It is a very sorry state of affair that a senior advocate quotes the decision without understanding the contents of the judgement.

6. Mr.Pandya next relies upon a decision of the Hon'ble the Apex Court in the matter of **Deb Narayan Halder Vs. Anushree Halder (Smt),** reported in (2003) 11 SCC 303. The learned advocate Mr.Pandya relied upon Head Note 'B':

> “Criminal Procedure Code, 1973 – S.401 – Revision – Findings of fact of trial court – Reversal of, by High Court – Propriety – High Court not applying mind to the evidence on

record or to the findings recorded by the trial court – Hence said reversal, held, not proper – Criminal Procedure Code, 1973 – S.386.”

While the Court is in midst of the dictation, Mr.Pandya interrupted and submitted that he relied upon Head Note 'A' rather than Head Note 'B'. Head Note 'A' reads as under :

“Criminal Procedure Code, 1973 – S.125 – Maintenance – Wife having left her matrimonial home without any justifiable ground – Held, not entitled to the grant of maintenance – On facts, two reasons given by respondent wife for her ill-treatment by husband, namely, his greed for dowry and that the respondent was not good-looking, held, were non-existent – Also, no other reason for ill-treatment – Facts indicating that for several years after their marriage they enjoyed normal marital relationship – Hence held, learned Magistrate rightly rejected wife's claim for maintenance.”

This decision also no way supports the contention of Mr.Pandya that, 'the amount of maintenance granted by

interim order is required to be refunded by the wife when in a final judgement the Court comes to the conclusion that no amount of maintenance is payable to the wife.

7. Mr.Pandya next relied upon a decision of Rajasthan High Court in the matter of **Mst.Shahida Vs. Chhuttan Khan**, reported in 1987 (2) Crimes 443. The Head Note of the decision reads as under:

> "Criminal Procedure Code, 1973 – Section 482 – Petition under – Application under section 482 praying for grant of maintenance till the disposal of main application – Original application filed under section 125 of the Code dismissed on the ground that the petitioner refused to live with her husband without any cause – Revision against – Dismissed – Whether the petitioner is entitled to the interim maintenance? (No)"

This decision is also not to the effect that, 'the interim maintenance granted by the Court is to be refunded'.

8. Mr.Pandya, learned advocate for the petitioner next

relied upon a decision of the Hon'ble the Apex Court in the matter of **Smt. Savitri Vs. Govind Singh Rawat**, reported in A.I.R. 1986 SC 984. The decision is to the effect that,

> "Head Note : Criminal P.C. (2 of 1974), S.125 – Proceedings under – Interim maintenance pending final disposal can be granted."

Mr.Pandya could not point out as to which part of the decision supports his contention. The submission of Mr.Pandya is reiterated even at the cost of repetition. The contention is that, 'when maintenance is granted by an interim order and at the final hearing the Court comes to the conclusion that the wife is not entitled to maintenance the Court must pass an order refunding the amount of maintenance paid under interim orders.

9. Mr.Pandya, learned advocate is labouring under an impression that unless he repeats his contention the Court will not be able to understand the same. He interrupted the dictation more than once.

10. Mr.Pandya, learned advocate relied upon a decision of this Court in the matter of **Kirtikant D. Vadodaria Vs. State of Gujarat & another**, reported in 1996 (2) GLH

261. He read para 16 of this judgement. The same is reproduced for ready perusal so that one can appreciate that how irrelevant it is to the proposition put forward by Mr.Pandya.

> “In the present case, as discussed above, the “step mother” respondent no.2 has got 5 natural born sons who are all major and at least 3 of them are well to do and capable of maintaining their mother. This apart, as already noticed, the husband of respondent no.2 is also possessed of sufficient means and property besides the monthly income that he derives from the business of Snuff enabling him to maintain and support his second wife, yet the step mother-respondent no.2 preferred to claim the maintenance only from the step son, the appellant herein leaving out all her natural born sons (from whom she cold claim maintenance as their mother) and husband who are well to do. Prima facie it appears that respondent no.2 proceeded against her step son with a view to punish and cause harassment to the appellant, which is wholly unjustified. In the facts and circumstances of this case, we are of the view that respondent

> no.2 is not entitled to claim any maintenance from the step son, appellant herein. In the result the appeal succeeds and is hereby allowed. The impugned orders of the High Court and the courts below are set aside and the petition of respondent no.2 for maintenance is dismissed, but without any orders as to costs. We, however, wish to clarify that **in the interest of justice and to balance the equities, the amount already received by respondent no.2 from the appellant shall not be refundable by her to the appellant**." (emphasis supplied)

Mr.Pandya, the learned advocate for applicant submitted that the fact that, 'the Hon'ble the Apex Court has said that we are not ordering respondent no.2 to refund the amount to the appellant' is to be construed to mean that, 'there is a power with the court to order the refund'. He submitted that the learned Judge of the Family Court No.2, Ahmedabad ought to have passed an order directing the wife refund the maintenance amount granted and paid under the interim order.

11. Mr.Pandya, the learned advocate then read ground (C) which is also reproduced for ready perusal:

“The petitioner believes that the jurisprudence prevails under the rule of law and there cannot be illegal imposition of liabilities upon an innocent person against the principles of justice and fair play. That while dismissing the application the trial court has come to conclusions against the respondent/ applicant/ wife for deserting the home and thereby not coming with clean hands to come to claim maintenance before a court of law and thereby perpetrating the judicial system. (Despite strenuous efforts, the Court is not able understand the meaning of the words, “perpetrating the judicial system). The reasons are fair and cannot be controverted at the instance of the defendant/ petitioner/ husband, however, the trial court has arbitrarily refused to deny the maintenance from the date of the application. That instead of allowing the same, the trial court ought to have appreciated that there cannot be unjust enrichment by any person and has to account the same to th deprived party before a court of law, and ought to have directed the respondent to return all remittances of maintenance to the petitioner/ husband, forthwith. That no principles and reasoning are afforded by the trial court for pronouncing the prospective judgment, the judgement and order is therefore, illegal, unjust, capricious, arbitrary and bad at law and is required to be revised and quashed and set aside, in the facts and circumstances of the case.”

Mr.Pandya wanted to read even the next ground. The court did not permit him to do so as it is nothing but a deliberate attempt on the part of Mr.Pandya to waste the time of the Court.

12. It is the first matter which is taken up and it is 12.00 noon when this order is dictated.

13. Mr.Pandya could not make out any point which will warrant interference at the hands of this Court. Hence this Criminal Revision Application is dismissed. This Revision Application is dismissed with a cost of Rs.7,500/- (Rupees seven thousand and five hundred only), which should be 'a condition precedent for filing any proceeding' before this Court.

(RAVI R. TRIPATHI, J.)

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